

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 14395 OF 2004

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10th February, 2006

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Between:

Hyderabad Model High School

Moghalpura, Hyderabad ...Petitioner

A N D

1. The State of Andhra Pradesh rep. by its
Principal Secretary to Government, School
Education (PS-2) Department, Secretariat,
Hyderabad and others

...Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 14395 OF 2004

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ORDER:

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1. This writ petition has been filed by Hyderabad Model High School, represented by its Head Mistress Smt. Mahar Ishrath assailing the action of the respondents in not paying the arrears of grant in aid monies to the petitioner school with effect from 1-9-

1985 to 31-10-1989.

2. This is second round of litigation. In the earlier round of litigation being W.P.No.20709 of 2001 the petitioner school approached this Court exposing the self same grievance. This Court by order dated 3-1-2002 directed the 3rd respondent-District Educational Officer to consider the representation of the petitioner and pass appropriate orders within a period of three months. The relevant portion of the order passed in W.P.No.20709 of 2001 reads as follow:

“The petitioner made a representation to the 1st respondent with the details showing in the separate annexure claiming the arrears of grant-in-aid from 1-9-1985 to 31-10-1989 in terms of G.O.Ms.No.326, dated 17-10-1989 and also as per the judgment of the Hon'ble Supreme Court in Government of Andhra Pradesh Vs. G.V.K. Girls High school (1)2000(6) ALD 84 SC). The same was returned by the 1st respondent stating that the petitioner has to produce the original Supreme Court order through proper channel. As the petitioner is not a party to that judgment before the Supreme Court, insisting the petitioner to produce the original copy of the Judgment is unwarranted. If the 1st respondent is of the opinion that the representation made by the petitioner is not correct, he can always obtain instructions from the learned Government Pleader for School Educations from the learned Government Pleader for School Education, High Court of A.P., about the law laid down by the Apex Court in the above case.

In view of the same, the petitioner is directed to resubmit the representation within a period of two weeks from the date of receipt of this order and on receipt of such representation, the 1st respondent after consulting the concerned Government Pleader shall pass appropriate orders within a period of three months thereafter”.

3. Pursuant to the direction in W.P.No. 20709 of 2001, a representation was submitted by the petitioner's school to the 1st respondent therein. Since the representation has not been considered within the time stipulated in the writ petition, a contempt case has been moved by the petitioner's school. However, the said case came to be disposed of directing the respondents to implement the orders of this Court in W.P.No. 20709 of 2001.

4. The proposal made by the District Educational Officer came to be examined by

the Government of Andhra Pradesh, Principal Secretary to Government, School Education (PS-2) Department which culminated in issue of proceeding on 15-3-2004 whereby and where under the request of the petitioner's school for release of the arrears of grant in aid for the period from 01-03-1986 to 31-10-1989 came to be rejected. Hence, the present writ petition.

5. Respondents filed counter affidavit. It is stated in the counter affidavit that unless the committee recommends the case of the petitioner's school for admission to grant in aid, invoking of Sections 3 and 5 of A.P. Educational Institutions Grant-in-Aid (Regulation) Supplementary Provision Act, 1995 does not arise. It further stated in the counter affidavit that the decision of the Supreme Court in **Govt. of A.P. Vs. G.V.K. Girls High School**, is not applicable to the case of the petitioner's school.

6. Heard learned counsel for the petitioner and learned Government Pleader for School Education appearing for the respondents.

7. Learned counsel for the petitioner submits that the 1st respondent rejected the proposal basing on G.O.Ms.No. 138, Education Department, dated 28-04-1994 and Section 2 of Act 34 of 1995 which came to be quashed by the Supreme court in **G.V.K.Girls High School's case** stated supra. He further submits that the case of the petitioner's school stands on the same footing as that of **G.V.K.Girls High School's case** and therefore, the respondents be directed to pay the arrears of grant in aid for the period from 1-9-1985 to 31-10-1989.

8. It is no more in dispute that G.O.Ms.No. 138, Education Department, dated 28-4-1994 and Section 2 of the Act 34 of 1995 fell for consideration in **G.V.K.Girls High School's case**. The Supreme Court declared that Section 2 of the Act 34 of 1995 cannot take away the right of the private educational institutions, if it is otherwise eligible for grant in aid. Paras 30 and 31 are need to be noted and they are as follows;

“Now Section 2 of Act 34 of 1995 also purports to nullify the effect of the judgment of the learned Single Judge. It is well settled that the legislature cannot overrule a judgment by passing a law to that effect unless it removes the basis of the legal rights upon which the judgment is based with retrospective effect and provided there is no violation of any constitutional provision in such withdrawal of rights retrospectively.

In the present case, we are not going into the question whether any provision of the Constitution is violated while passing Act 34 of 1995 denying arrears of grant-in-aid retrospectively. However, in our view, inasmuch as the rights created by Act 1 of 1982 and Act 22 of 1988 read with the Committee's recommendations have not been nullified by Act 22 of 1995, the judgment of the learned Single Judge remains effective. The basis of the judgment has not been removed. We have already shown that the rights flowing from the acts were not touched. Only rights flowing from the government orders were taken away retrospectively. It is therefore necessary to give effect to the judgment of the learned Single Judge. The writ appeal was rightly dismissed.

For the above reasons, which are somewhat different from the reasons given by the Division Bench, we dismiss this civil appeal. The arrears of the grant-in-aid as declared above as per Act 1 of 1982 and Act 22 of 1988 and also as directed by the learned Single Judge shall now be released in favour of the writ petitioner. There will be no order as to costs."

9. In view of the conclusion arrived at by the Supreme Court, the reasons given by the 1st respondent for rejecting the proposal of 3rd respondent are not sustainable.

10. In the result, the writ petition is disposed of directing the respondents to consider the proposal issued by the District Educational Officer, dehorse G.O.Ms.No. 138, Education, dated 28-4-1994 and provision of Section 2 of the Act 34 of 1995 and pass appropriate orders within three weeks from the date of receipt of a copy of this order. No order as to costs.

Justice B.Seshasayana Reddy

10th February, 2006

C.C.in a week.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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